

the existing debt instrument and attach an allonge that modifies the terms of the original note.

(f) *Replacement of loan guarantee, or assignment guarantee agreement.* If the guarantee or assignment guarantee agreements are lost, stolen, destroyed, mutilated, or defaced, except where the evidence of debt was or is a bearer instrument, the Agency will issue a replacement to the lender or holder upon receipt of acceptable documentation including a certificate of loss and an indemnity bond.

[64 FR 7378, Feb. 12, 1999, as amended at 72 FR 63297, Nov. 8, 2007; 73 FR 74345, Dec. 8, 2008; 75 FR 54014, Sept. 3, 2010; 76 FR 58094, Sept. 20, 2011]

§§ 762.131–762.139 [Reserved]

§ 762.140 General servicing responsibilities.

(a) *General.* (1) Lenders are responsible for servicing the entire loan in a reasonable and prudent manner, protecting and accounting for the collateral, and remaining the mortgagee or secured party of record.

(2) The lender cannot enforce the guarantee to the extent that a loss results from a violation of usury laws or negligent servicing.

(b) *Borrower supervision.* The lender's responsibilities regarding borrower supervision include, but are not limited to the following:

(1) Ensuring loan funds are not used for unauthorized purposes.

(2) Ensuring borrower compliance with the covenants and provisions contained in the promissory note, loan agreement, mortgage, security instruments, any other agreements, and this part. Any violations which indicate non-compliance on the part of the borrower must be reported, in writing, to both the Agency and the borrower.

(3) Ensuring the borrower is in compliance with all laws and regulations applicable to the loan, the collateral, and the operations of the farm.

(4) Receiving all payments of principal and interest on the loan as they fall due and promptly disbursing to any holder its pro-rata share according to the amount of interest the holder has in the loan, less only the lender's servicing fee.

(5) Performing an annual analysis of the borrower's financial condition to determine the borrower's progress. The annual analysis will include:

(i) For loans secured by real estate only, the analysis for standard eligible lenders must include an analysis of the borrower's balance sheet. CLP lenders will determine the need for the annual analysis based on the financial strength of the borrower and document the file accordingly. PLP lenders will perform an annual analysis in accordance with the requirements established in the lender's agreement.

(ii) For loans secured by chattels, all lenders will review the borrower's progress regarding business goals, trends and changes in financial performance, and compare actual to planned income and expenses for the past year.

(iii) An account of the whereabouts or disposition of all collateral.

(iv) A discussion of any observations about the farm business with the borrower.

(c) *Monitoring of development.* The lender's responsibilities regarding the construction, repairs, or other development include, but are not limited to:

(1) Determining that all construction is completed as proposed in the loan application;

(2) Making periodic inspections during construction to ensure that any development is properly completed within a reasonable period of time; and

(3) Verification that the security is free of any mechanic's, materialmen's, or other liens which would affect the lender's lien or result in a different lien priority from that proposed in the request for guarantee.

(d) *Loan installments.* When a lender receives a payment from the sale of encumbered property, loan installments will be paid in the order of lien priority. When a payment is received from the sale of unencumbered property or other sources of income, loan installments will be paid in order of their due date. Agency approval is required for any other proposed payment plans.

[64 FR 7378, Feb. 12, 1999, as amended at 69 FR 44579, July 27, 2004]